REMARKS

Claims 21-40 were originally filed in the present application.

Claims 21-40 are pending in the present application.

Claims 21-40 were rejected in the November 30, 2005 Office Action.

No claims have been allowed.

Claims 21 and 29 are amended herein

Claims 21-40 remain in the present application.

Reconsideration of the claims is respectfully requested.

In Sections 1 and 2 of the November 30, 2006 Office Action, the Examiner rejected Claims 21-40 as unpatentable under the judicially created doctrine of double patenting over Claims 1-20 of U.S. Patent No. 6,625,134 (the '134 Patent). Although the Examiner admits that the conflicting claims are not identical, the Examiner goes on to contend that the claims of the present application are not patentably distinct from Claims 1-20 of the '134 Patent. Applicants respectfully disagree.

Obviousness-type double patenting requires rejection of an application claim when the claimed subject matter is *not* patentably distinct from the subject matter claimed in a commonly owned patent, when the issuance of a second patent would provide an unjustified extension of the term of the right to exclude granted by a patent. MPEP § 804, p. 800-21 (8th ed., rev. 3, August 2005). A double patenting rejection of the obviousness-type is analogous to the non-obviousness requirement of 35 U.S.C. § 103 except that the patent principally underlying the double patenting rejection is *not* considered prior art. *Id.* (citations omitted).

Claim 1 of the '134 Patent requires *inter alia* a failure detection circuit capable of detecting a failure in said at least one overhead channel of a first base transceiver station and generating a failure notification. Independent Claims 21, 29 and 37 of the present application do not claim, for example, a failure detection circuit, as required by independent Claims 1, 9 and 17 of the '134 Patent. In addition, unlike Claims 1, 9 and 17 of the '134 Patent, independent Claims 21, 29 and 37 of the present application require a channel allocator capable of receiving said access request notification and, in response thereto: (1) *terminating* a first communication link between said first base transceiver station and *a first selected one of said plurality of mobile stations*, wherein said first selected mobile station maintains at least a second communication link with at least a second base transceiver station of said wireless network, and 2) *allocating* a first data traffic channel associated with said *terminated* first communication link to establish a communication link with said *accessing mobile station.*

Accordingly, the '134 Patent is patentably distinct from and does not claim the same invention as that of the present application. Applicants therefore respectfully request that the rejection of Claims 21-40 under the judicially created doctrine of double patenting over Claims 1-20 of the '134 Patent be withdrawn.

In Section 3 of the November 30, 2005 Office Action, the Examiner indicated that Applicants' arguments filed October 11, 2005 were considered but were not persuasive. Applicants respectfully traverse and direct the Examiner's attention to the below-included remarks in support of its traversal.

In Sections 4 and 5 of the November 30, 2005 Office Action, the Examiner rejected Claims 21-27, 29-35 and 37-39 under 35 U.S.C. §102(e) as allegedly being anticipated by U.S. Patent No. 6,108,547 to *Yamashita, et al.* (the "Yamashita reference"). Applicants respectfully disagree.

The Yamashita reference discloses receiving an access request from a first mobile station and performing soft handoff. (Yamashita reference, column 5, lines 37-58). The Yamashita reference goes on to disclose terminating traffic information communications from a line controller of a first base transceiver station and a transceiver of a second base transceiver station (a first data traffic channel), while establishing traffic information communications between a transceiver of the first base transceiver station and a line controller of the second base transceiver station (a second data traffic channel) during soft handoff. (Yamashita reference, column 5, lines 45-58 and FIGURE 3). Forward traffic information received from the second base transceiver station is transmitted to the accessing mobile station as the radio frequency signal on the allocated channel (or second data traffic channel). (Yamashita reference, column 6, lines 46-48). On the other hand, the Yamashita reference discloses that reverse traffic information, received from the accessing mobile station as the radio frequency signal on the allocated channel (or the second data traffic channel), is transferred to the second base station transceiver. (Yamashita reference, column 6, lines 48-51).

The Yamashita reference fails, however, to disclose, *inter alia*, a channel allocator capable of receiving said access request notification and, in response thereto: (1) *terminating* a first communication link between said first base transceiver station and a first selected one of said plurality of mobile stations, wherein said first selected mobile station maintains at least a second

communication link with at least a second base transceiver station of said wireless network, and 2) allocating a first data traffic channel associated with said *terminated* first communication link to establish a communication link with said *accessing mobile station*, as required by Claims 21 and 29. In other words, unlike the Yamashita reference, Claims 21 and 29 essentially claim a channel allocator that receives a notification of a first mobile station attempting to access a base station. In response to the access attempt notification, Claims 21 and 29 require that the channel allocator tears down an existing handoff channel associated with a second mobile station and re-allocates it to the *new first mobile station* that is attempting to access the base station. The channel allocator is able to tear down the *existing* handoff channel because the second mobile station in handoff state still has at least one other handoff channel that it can use. Claims 21 and 29 are thus allowable. Moreover, Claims 22-27 and 30-35, which depend from Claims 21 and 29, respectively, are also allowable. Applicants therefore request favorable reconsideration and allowance of Claims 21-27 and 29-35.

Similarly, with respect to Claim 37, the Yamashita reference fails to disclose a method for allocating the plurality of data traffic channels comprising: in response to the access request message detection, *terminating* a first communication link between the first base transceiver station and *a first selected one of the plurality of mobile stations*, wherein the first selected mobile station maintains at least a second communication link with at least a second base transceiver station; and allocating a first data traffic channel associated with the *terminated* first communication link to establish a communication link with the *accessing mobile station*, as required by Claim 37. Thus, unlike the Yamashita reference, Claim 37 essentially claims a method in which a channel allocator receives a

notification that a first mobile station is attempting to access a base station, the channel allocator tears down an existing handoff channel associated with a *second mobile station* and re-allocates it to the *new first mobile station* attempting to access the base station. The channel allocator is able to tear down the existing handoff channel because the second mobile station in handoff state still has at least one other handoff channel that it can use. Claim 37 and its dependents, Claims 38-40, are thus allowable. Applicants therefore request favorable reconsideration and allowance of Claims 37-40.

In Sections 6 and 7 of the November 30, 2005 Office Action, the Examiner rejected Claims 28, 36 and 40 under 35 U.S.C. §103(a) as being unpatentable over the Yamashita reference in view of U.S. Patent No. 5,287,544 to *Menich, et al.* (the "Menich reference"). Applicants respectfully disagree.

Claim 28 ultimately depends from allowable Claim 21 and therefore is also allowable. Moreover, the Yamashita reference, either alone or taken in combination with the Menich reference, does not disclose or make obvious all the necessary elements as required by Claim 28 and, ultimately, Claim 21. For example, the Yamashita reference fails to disclose, *inter alia*, a channel allocator capable of receiving said access request notification and, in response thereto: (1) *terminating* a first communication link between said first base transceiver station and a first selected one of said plurality of mobile stations, wherein said first selected mobile station maintains at least a second communication link with at least a second base transceiver station of said wireless network, and 2) allocating a first data traffic channel associated with said *terminated* first communication link to establish a communication link with said *accessing mobile station*, as required by Claim 21 and

thus by Claim 28. The Menich reference, on the other hand, discloses a method for grouping channels having similar interference characteristics and allocating channels to communication units based on calculated link signal losses specific to GSM systems. (Menich reference, column 2, lines 21-27 and column 3, lines 3-10). Although the Menich reference discloses that handoff decisions may be based on received signal strength indication (RSSI), there is no suggestion or motivation in the Yamashita or Menich references to prompt one of ordinary skill to selectively and non-inventively combine or *seek out* other elements as required by Claim 28. Accordingly, the Yamashita and Menich references fail to render the Applicants' invention obvious. Claim 28 contains unique and non-obvious limitations over the art cited and is thus patentably distinguishable.. Applicants thus respectfully request favorable reconsideration and withdrawal of the rejection to Claim 28.

Similarly, Claim 36 ultimately depends from allowable Claim 29 and Claim 40 ultimately depends from allowable Claim 37. Claims 36 and 40 are thus also allowable. Applicants therefore respectfully request favorable reconsideration and withdrawal of the rejection to Claim 40. Applicants thus respectfully request favorable reconsideration and withdrawal of the rejection to Claims 36 and 40.

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SUMMARY

For the reasons given above, the Applicants respectfully request reconsideration and allowance of the pending claims and that this application be passed to issue. If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Applicants respectfully invite the Examiner to contact the undersigned at the telephone number indicated below or at ***jmockler@davismunck.com***.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Deposit Account No. 50-0208.

Respectfully submitted,

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